United States Department of Labor
Employees' Compensation Appeals Board

M.L., Appellant	)	
and	)	**Docket No. 09-2126**
	)	**Issued: May 5, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Atlanta, GA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 18, 2009 appellant filed a timely appeal from a June 11, 2009 merit decision of the Office of Workers' Compensation Programs denying modification of a March 13, 2009 merit decision that denied her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of appellant's claim.

ISSUE

The issue is whether appellant established that on January 27, 2009 she sustained an injury in the performance of duty causally related to her employment.

FACTUAL HISTORY

On February 2, 2009 appellant, a 37-year-old rural carrier, filed a traumatic injury claim (Form CA-1) for a right elbow condition that she attributes to casing mail. She alleges that on

January 27, 2009 while lifting flats and casing mail her elbow "popped" after which she experienced elbow pain.[1]

Appellant submitted reports bearing an illegible signature.[2]

By decision dated March 13, 2009, the Office denied the claim. While it found the evidence of record established that the employment incident occurred as alleged, it denied the claim because the evidence of record did not demonstrate the established employment incident that caused a medically-diagnosed condition.

On March 22, 2009 appellant requested reconsideration.

Appellant submitted reports signed by a registered nurse and other reports bearing an illegible signature.

By decision dated June 11, 2009, the Office denied modification of its March 13, 2009 decision, finding that the evidence of record did not demonstrate the established employment incident that caused a medically-diagnosed condition.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of proof to establish the essential elements of her claim by the weight of the evidence,[4] including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.[5] As part of her burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.[6] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.

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[1] Appellant submitted additional evidence on appeal. The Board may not consider evidence for the first time on appeal**,** which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). *See J.T.*, 59 ECAB ___ (Docket No. 07-1898, issued January 7, 2008) (holding the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision.

[2] The Board notes that the Office issued a Form CA-16. A properly executed Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. *See Elaine M. Kreymborg*, 41 ECAB 256, 259 (1989). The CA-16 issued to appellant did not authorize either examination or treatment and was therefore not properly executed.

[3] 5 U.S.C. §§ 8101-8193.

[4] *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[5] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[7] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.

ANALYSIS

The Office accepted that on January 27, 2009 as appellant lifted flats and cased mail her elbow "popped." Appellant's burden is to establish that the accepted employment incident caused a medically-diagnosed injury. As noted above, causal relationship is a medical issue that can only be established through production of probative rationalized medical opinion evidence. Appellant has not submitted sufficient medical opinion evidence to substantiate her claim.

Appellant submitted reports bearing illegible signatures, which lacked probative medical value on the issue of causal relationship and are insufficient to satisfy her burden of proof because their author cannot be identified as a "physician" for purposes of the Act.[9]

Appellant also submitted reports from a registered nurse. Because healthcare providers such as nurses, acupuncturists, physicians' assistants and physical therapists are not considered "physicians" under the Act, their reports and opinions do not constitute competent medical evidence.[10] Accordingly, these reports do not constitute competent medical evidence and do not satisfy appellant's burden of proof.

[7] *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

[8] *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

[9] 5 U.S.C. § 8101(2). *See R.M.*, 59 ECAB ___ (Docket No. 08-734, issued September 5, 2008); *Merton J. Sills*, 39 ECAB 572 (1988).

[10] *Id.*; *see also G.G.*, 58 ECAB 389 (2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.[11] Further, the fact that a condition manifests itself or worsens during a period of employment[12] or that work activities produce symptoms revelatory of an underlying condition[13] does not raise an inference of causal relationship between a claimed condition and employment factors.

The Board finds that appellant has not submitted sufficient medical opinion evidence to establish that the accepted incident caused an injury in the performance of duty causally related to her employment.

CONCLUSION

The Board finds that appellant has not established that on January 27, 2009 she sustained an injury in the performance of duty causally related to her employment.

[11] *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007)*; Ruth R. Price*, 16 ECAB 688, 691 (1965).

[12] *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

[13] *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson*, 12 ECAB 155,157 (1960).

ORDER

IT IS HEREBY ORDERED THAT the June 11 and March 13, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 5, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board